

1976 S.C. Op. Atty. Gen. 313 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4453, 1976 WL 23070

Office of the Attorney General

State of South Carolina

Opinion No. 4453

September 20, 1976

\*1 Arthur S. Bahnmuller, Esquire  
17 E. Calhoun Street  
Somter, SC 29150

Dear Mr. Bahnmuller:

You have requested an opinion from this office as to whether or not the upcoming election for trustees of School District No. 2 in Sumter would be considered a special election for the purposes of certifying candidates for the November general election. The question has arisen due to the recent changes in the election laws relating to the election of the trustees and the time of certifying candidates in municipal and special elections. See South Carolina Code of Laws, 1962, as amended, Sections 21-4079, 21-4080, 23-400.15.

Sections 21-4079 and 21-4080 were amended by the 1976 General Assembly. (R646, H3812; R681, H4080) These acts were submitted to the United States Department of Justice and have not at this time been approved. Prior to the passage of R646, nominees for trustee simply filed with the county superintendent who published the names of the candidates and conducted the election. The act bearing ratification number 646 continued the practice of candidates filing for office with the county superintendent but would have the county election commission conduct the election. The act bearing ratification number 681 changed the entire procedure and stated any candidate offering for the position of trustee for School District No. 2 shall file for such office in the manner provided by law for county officers. The county election commission shall conduct the election, appoint the managers of the election, designate the places of election, receive in writing the returns of the managers and declare the results thereof. The qualifications of electors shall be the same as those required by law for voting in the general election for State and county officers.

By a 1976 amendment to Section 23-400.15 of the Code, the time for certifying candidates in a special or municipal election was changed from forty-five days to thirty days. On the basis of these statutes you have inquired if the trustee election would be considered a special election and therefore the candidates would not have to be certified until thirty days before the election.

In my opinion, the school trustee election is not a special election. It is an election established by law to be held in November to elect an officer to a regular term of office; it is, therefore, by its nature not a special election but a general election. See South Carolina Code of Laws, 1962, as amended, Section 23-2(1)(2).

As the Justice Department has not at this time approved the act, you may accept the certification of nominees pending approval by the Justice Department. It is my understanding that a decision from the Justice Department on these two acts is imminent.

You have further asked how long you should wait on a decision by the Justice Department on these acts before printing the ballots. This is a decision within your discretion and which you must make as you alone are aware of the time factors involved in printing the Sumter County ballot and, of course, the responsibility for printing the ballot rests with the county election commission. South Carolina Code of Laws, 1962, as amended, Section 23-400.14; 23-400.15; 21-4080.

Very truly yours,

\*2 Treva G. Ashworth  
Assistant Attorney General

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